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38834	7590	07/13/2009	EXAMINER	
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1250 CONNECTICUT AVENUE, NW				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Art Unit: 3761

1. Applicant's arguments regarding the outstanding rejections are not persuasive. With respect to arguments regarding the rejection of claims 1-9 under 35 U.S.C. 112, examiner's reference to a porous antibacterial agent refers to the porous material incorporating an antibacterial metal recited in claim 1. As there is no conflict regarding terminology that would cause confusion, it is examiner's position that it is clear that what is being referred to in the rejection is the porous material with the antibacterial material therein. This does not change the fact that there is still no support for a metal chelating agent outside of the porous material. As applicant's entire argument appears to exploit the discrepancy of terminology between the rejection and the claims without providing legitimate examples of support from the disclosure, the rejection of claims 1-9 under 35 U.S.C. 112 is maintained. The citation from the disclosure that the organic material forms salts with the sustained-release antibacterial metal is insufficient because again it is not clear from the disclosure what is meant by "outside", e.g. immediately outside, outside the solid portion of the material but within a pore, outside the compound as a whole. Elution is a process that has many phases and therefore at any time and physical position while the antibacterial metal is eluting, it is considered released or sustained-released. Therefore, depending on the intended definition of "outside", the chelating agent-antibacterial metal salt may or may not be formed outside of the porous material, i.e. the salt could be formed and rest within a pore of the material in which case it is not "outside" the porous material as that term is interpreted by the examiner.

2. With respect to arguments regarding the rejection of claims 1-9 under 35 U.S.C. 103, first the fact that applicant asserts that comparative example 2 of applicant's invention is Gancet's compound and shows poor results compared to examples 1 and 2 is immaterial. The compound of Gancet meets all of the claim limitations except those with regard to a chelating agent. Hosokawa was then introduced to remedy the deficiencies of Gancet. Second, with regard to the argument that Hosokawa does not disclose that chelating agent is added to capture eluted antibacterial metal, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious.

See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

3. In light of the lack of new or persuasive arguments placing the application in better form for appeal or in condition for allowance, the reply is not entered.